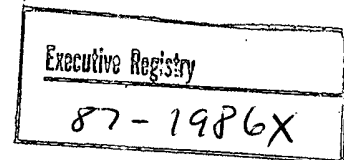




EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503  
May 26, 1987



M-87-25

MEMORANDUM TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Government-wide Nonprocurement Debarment and Suspension System

On February 18, 1986, the President signed Executive Order 12549, "Debarment and Suspension." The Order directs Federal executive branch departments and agencies to participate in a system for nonprocurement debarment and suspension under which an agency's debarment or suspension of a nonprocurement program participant will have government-wide effect.

Pursuant to Section 6 of the Order, the attached Office of Management and Budget (OMB) guidelines prescribe the program coverage, government-wide criteria, minimum due process procedures, and other guidance for this system. The guidelines are prepared in regulation format to facilitate your use in preparing agency regulations.

Section 3 of the Order directs agencies to issue regulations to implement the system. Proposed agency regulations, which are to be consistent with these guidelines, should be submitted to the Financial Management Division in OMB for review no later than four months from the date of this memorandum in accordance with Section 3 of the Order. Please submit a copy after Federal Register publication to the General Services Administration (GSA).

Section 5 of the Order directs OMB to designate a Federal agency to maintain a current list of excluded participants, periodically distribute the list to Federal agencies, study the feasibility of automating the list, coordinate with GSA in its role as the lead agency for government-wide debarment and suspension of contractors, and report periodically to OMB on implementation of E.O. 12549. This memorandum designates GSA to fulfill these functions. Section 5 also directs OMB to designate a chair for the Interagency Committee on Debarment and Suspension established by Section 4. OMB will co-chair this interagency committee with an agency to be named later.

Further information regarding implementation of the Order may be obtained from the Grants Management staff, Financial Management Division, at 395-3050.

DD/A REGISTRY

FILE: 60-7

Joseph R. Wright, Jr.  
Deputy Director

Attachment

GUIDELINES FOR GOVERNMENT-WIDE  
DEBARMENT AND SUSPENSION (NONPROCUREMENT)

SUBPART A -- GENERAL

§ \_\_\_\_ .100 Purpose.

(a) Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a system for debarment and suspension from programs and activities involving Federal financial and nonfinancial assistance and benefits. Debarment or suspension of a participant in a program by one agency shall have government-wide effect. Section 6 of the Order authorizes the Office of Management and Budget (OMB) to issue guidelines concerning the Order.

(b) These guidelines implement Section 6 of Executive Order 12549 by:

(1) Prescribing the programs and activities that are covered by the Order;

(2) Prescribing the government-wide criteria and government-wide minimum due process procedures that Federal agencies shall use in implementing the Order;

(3) Providing for the listing of debarred and suspended participants, participants who voluntarily exclude themselves from participation in covered transactions, and participants declared ineligible (see the definition of "ineligible" in § \_\_\_\_ .120);

(4) Setting forth the consequences of the actions under paragraph (b)(3) of this section;

(5) Offering such other guidance as necessary for the effective implementation and administration of the Order.

(c) Although these guidelines cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

(d) The procedures set forth in §§ \_\_\_\_ .310 and \_\_\_\_ .410 are the minimum due process procedures which agencies must follow. However, agencies are free to supplement them in any way not inconsistent with those sections.

§ \_\_\_\_ .105 Authority.

These guidelines are issued pursuant to Executive Order 12549 of February 18, 1986.

## § \_\_\_\_ .110 Coverage.

(a) Covered transactions. These guidelines apply to Executive branch domestic assistance transactions described below:

(1) General. Covered transactions (whether by a Federal agency, recipient, subrecipient, or intermediary) include, except as noted in paragraph (a)(3) of this section: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreements; subawards, subcontracts and transactions at any tier that are charged as direct or indirect<sup>1</sup> costs, regardless of type (including subtier awards under awards which are statutory entitlement or mandatory awards); and specially covered activities identified in paragraph (a)(2) of this section.

(2) Specially covered activities. In addition to those transactions identified in paragraph (a)(1) of this section, participants in the loan, loan guarantee, and insurance programs of the Departments of Agriculture and Housing and Urban Development and of the Veterans Administration, and in the interstate land sales and manufactured housing programs of the Department of Housing and Urban Development are subject to these guidelines. Also, those in business relationships with such participants with respect to such programs are subject to these guidelines, whether or not their participation involves the actual receipt of Federal funds.

(3) Exceptions. The following transactions are not covered: statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory); benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted); incidental benefits derived from ordinary governmental operations; and, other transactions where the application of Executive Order 12549 and these guidelines would be prohibited by law.

(b) Relationship to other sections. This section, § \_\_\_\_ .110, describes the types of activities and transactions to which a debarment or suspension under the guidelines will apply. Subpart B, Effect of Action, § \_\_\_\_ .200, sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants in the covered transactions and activities described in § \_\_\_\_ .110. Sections \_\_\_\_ .330, Scope of debarment, and \_\_\_\_ .420, Scope of suspension, govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which additional affiliates or persons associated with a participant may also be brought within the scope of the action.

<sup>1</sup> "or indirect" - EXCLUDED AT AGENCY OPTION

(c) Relationship to Federal acquisition activities. Executive Order 12549 and these guidelines do not apply to direct Federal acquisition activities. Debarment and suspension of Federal contractors and subcontractors are covered by the Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4. However, agencies are encouraged to integrate their administration of these complementary debarment and suspension programs.

§ \_\_\_\_ .115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these guidelines, are appropriate means to effectuate this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these guidelines.

§ \_\_\_\_ .120 Definitions.

Adequate evidence. Information sufficient to support the reasonable belief that a particular act or omission has occurred.

Affiliate. Persons are affiliates of one another if, directly or indirectly, one owns, controls, or has the power to control the other, or a third person owns, controls, or has the power to control both.

Agency. Any executive department, military department or defense agency, or other agency of the executive branch, excluding the independent regulatory agencies.

Consolidated List. A list compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about participants who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these guidelines, and those who have been determined to be ineligible.

Control. The power to exercise, directly or indirectly, a controlling influence over the management, policies, or activities of a person, whether through the ownership of voting securities, through one or more intermediary persons, or otherwise. For purposes of actions under these guidelines, a person who owns or has the power to vote more than 25 percent of the outstanding voting securities of another person, or more than 25 percent of total equity if the other person has no voting securities, is presumed to control. Such presumption may be rebutted by evidence. Other indicia of control include, but are not limited to: interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees; and, establishment, following the debarment, suspension, or other exclusion of a participant, of an organization or entity which is to operate in the same business or activity and to have substantially the same management, ownership, or principal employees as the debarred, suspended or excluded participant.

Conviction. A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

Debarment. An action taken by a debarring official in accordance with agency regulations implementing Executive Order 12549 to exclude a person from participating in covered transactions. A person so excluded is "debarred."

Debarring official. An agency head or a designee authorized by the agency head to impose debarment.

Indictment. Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

Ineligible. Excluded from participation in covered transactions, programs or agreements pursuant to statutory, Executive order, or regulatory authority other than Executive Order 12549 and its agency implementing and supplementing regulations; for example, excluded pursuant to the Davis-Bacon Act and its related statutes and implementing regulations, the equal employment opportunity acts and Executive orders, or the environmental protection acts and Executive orders.

Legal proceedings. Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

Notice. A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

Participant. Any person who submits proposals for, receives an award or subaward or performs services in connection with, or reasonably may be expected to be awarded or to perform services in connection with, a covered transaction. This term also includes any person who conducts business with a Federal agency as an agent or representative of another participant.

Person. Any individual, corporation, partnership, association, unit of government or legal entity however organized, including any subsidiary of any of the foregoing.

Preponderance of the evidence. Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Proposal. A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking a benefit, directly or indirectly, under a covered transaction.

Respondent. A person against whom a debarment or suspension action has been initiated.

Subsidiary. Any corporation, partnership, association or legal entity however organized, owned or controlled by another person.

Suspending official. An agency head or a designee authorized by the agency head to impose suspension.

Suspension. An action taken by a suspending official in accordance with agency regulations implementing Executive Order 12549 to immediately exclude a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal or debarment proceedings as may ensue. A person so excluded is "suspended."

Voluntary exclusion. A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

## SUBPART B -- EFFECT OF ACTION

## § \_\_\_\_ .200 Debarment or suspension.

(a) Except to the extent prohibited by law, a person's debarment shall be effective throughout the executive branch of the Federal Government. Except as provided in § \_\_\_\_ .215, persons who are debarred or suspended under these provisions are excluded from participation in all covered transactions of all agencies for the period of their debarment or suspension. Accordingly, agencies and participants shall not make awards to or agree to participation by such debarred or suspended persons during such period.

(b) In addition, persons who are debarred or suspended are excluded from participation in or under any covered transaction in any of the following capacities: as an owner or partner holding a controlling interest, director, or officer of the participant; as a principal investigator, project director, or other position involved in management of the covered transaction; as a provider of federally-required audit services; in any other position to the extent that the incumbent is responsible for the administration of Federal funds; or in any other position charged as a direct cost under the covered transaction.

## § \_\_\_\_ .205 Voluntary exclusion.

Participants who accept voluntary exclusions under § \_\_\_\_ .320 are excluded in accordance with the terms of their settlements; their listing, pursuant to Subpart E, is for informational purposes. Awarding agencies and participants must contact the original action agency to ascertain the extent of the exclusion.

## § \_\_\_\_ .210 Ineligible persons.

Persons who are ineligible are excluded in accordance with the applicable statutory, Executive order, or regulatory authority.

## § \_\_\_\_ .215 Exception provision.

An agency may grant an exception permitting a debarred, suspended, or excluded person to participate in a particular transaction upon a written determination by the agency head or authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549. However, the Order states that it is the President's intention that exceptions to this policy should be granted only infrequently. Exceptions should be reported in accordance with § \_\_\_\_ .505.

§ \_\_\_\_ .220 Continuation of current awards.

(a) Notwithstanding the debarment, suspension, voluntary exclusion or ineligible status of any person, agencies and participants may continue agreements in existence at the time the person was debarred, suspended, declared ineligible or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend the duration of current agreements with any person who is debarred, suspended, declared ineligible or under a voluntary exclusion, except as provided in § \_\_\_\_ .215.

§ \_\_\_\_ .225 Failure to adhere to restrictions.

Doing business with a debarred, suspended or otherwise excluded person, in connection with a covered transaction, where it is known or reasonably should have been known that the person is debarred, suspended or otherwise excluded from participation in such transaction, except as permitted under these guidelines, may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies as appropriate.



## SUBPART C -- DEBARMENT

## § \_\_\_\_ .300 General.

The debarring official may debar a participant for any of the causes in § \_\_\_\_ .305, using procedures established in accordance with § \_\_\_\_ .310. The existence of a cause for debarment, however, does not necessarily require that the participant be debarred; the seriousness of the participant's acts or omissions and any mitigating factors should be considered in making any debarment decision.

## § \_\_\_\_ .305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ \_\_\_\_ .300 and \_\_\_\_ .310 for:

(a) Conviction of or civil judgment for any offense indicating a lack of business integrity or honesty which affects the present responsibility of a participant, including but not limited to:

(1) Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement;

(2) Bribery, embezzlement, false claims, false statements, falsification or destruction of records, forgery, obstruction of justice, receiving stolen property, or theft; or

(3) Unlawful price fixing between competitors, allocation of customers between competitors, bidrigging, or any other violation of Federal or State antitrust laws that relates to the submission of bids or proposals.

(b) Violation of the terms of a public agreement so serious as to affect the present responsibility of a participant, including but not limited to:

(1) A willful or material failure to perform under one or more public agreements;

(2) A history of substantial noncompliance with the terms of one or more public agreements; or

(3) A willful or material violation of a statutory or regulatory provision or requirement applicable to a public agreement.

(c) Any of the following causes:

(1) Debarment or equivalent exclusionary action by any public agency or instrumentality for causes substantially the same as provided for by § \_\_\_\_ .305;

(2) Doing business with a debarred, suspended or otherwise excluded person, in connection with a covered transaction, where it is known or reasonably should have been known that the person is debarred, suspended or otherwise excluded from participation in such transactions;

(3) Conduct indicating a lack of business integrity or honesty which affects the present responsibility of a participant;

(4) Loss or denial of the right to do business or practice a profession under circumstances indicating a lack of business integrity or honesty or otherwise affecting the present responsibility of a participant;

(5) Failure to pay a debt (including disallowed costs and overpayments) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted; or

(6) Violation of a material provision of a voluntary exclusion or of any settlement of a debarment or suspension action.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a participant.

§ \_\_\_\_ .310 Procedures.

(a) Investigation and referral. Agencies shall establish procedures for the prompt reporting, investigation, and referral to the debarring official of matters appropriate for that official's consideration.

(b) Decisionmaking process. Agencies shall establish procedures governing the debarment decisionmaking process that are as informal as practicable, consistent with principles of fundamental fairness. These procedures shall, at a minimum, provide the following:

(1) Notice of proposed debarment. A debarment proceeding shall be initiated by notice to the respondent advising:

(i) That debarment is being considered;

(ii) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(iii) Of the cause(s) relied upon under § \_\_\_\_ .305 for proposing debarment;

(iv) Of the provisions of § \_\_\_\_ .310(b)(1)-(b)(6) and the agency's specific procedures governing debarment decisionmaking;

(v) Of the effect of the proposed debarment pending a final debarment decision; and

(vi) Of the potential effect of a debarment.

(2) Submission in opposition. Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(3) Additional proceedings as to disputed material facts.

(i) In actions not based upon a conviction or judgment, if it is found that there exists a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents.

(ii) A transcribed record of any additional proceedings shall be made available at cost to the respondent, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

(4) Debarring official's decision.

(i) No additional proceedings necessary. In actions based upon a conviction or judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(ii) Additional proceedings necessary.

(A) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(B) The debarring official may refer matters involving disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(C) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(5) Standard of evidence. In any contested action, the cause for debarment must be established by a preponderance of the evidence. In any contested action in which the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(6) Notice of debarring official's decision.

(i) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(A) Referring to the notice of proposed debarment;

(B) Specifying the reasons for debarment;

(C) Stating the period of debarment, including effective dates; and

(D) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or a designee authorized by an agency head makes the determination referred to in § \_\_\_\_\_.215.

(ii) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

§ \_\_\_\_\_.315 Effect of proposed debarment.

Upon issuance of a notice of proposed debarment and until the final debarment decision is rendered, the debarring agency shall not make any new awards to the respondent. That agency may waive this exclusion pending a debarment decision upon a written determination by the debarring official identifying the reasons for doing so. In the absence of such a waiver, the provisions of § \_\_\_\_\_.215 allowing exceptions for particular transactions may be applied.

§ \_\_\_\_\_.320 Voluntary exclusion.

A participant and an agency may enter into a settlement providing for the exclusion of the participant. Such exclusion shall be entered on the Consolidated List (see Subpart E).

## § \_\_\_\_ .325 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, a debarment should not exceed three years. Where circumstances warrant, a longer or indefinite period of debarment may be imposed. If a suspension precedes a debarment, the suspension period may be considered in determining the debarment period.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of § \_\_\_\_ .310 shall be followed to extend the debarment.

(c) The debarring official may reduce the period or scope of debarment, upon the respondent's request, supported by documentation, for reasons such as:

- (1) Newly discovered material evidence;
- (2) Reversal of the conviction or judgment upon which the debarment was based;
- (3) Bona fide change in ownership or management;
- (4) Elimination of other causes for which the debarment was imposed; or
- (5) Other reasons the debarring official deems appropriate.

## § \_\_\_\_ .330 Scope of debarment.

(a) Scope in general.

(1) Debarment of a person or affiliate under Executive Order 12549 constitutes debarment of all its subsidiaries, divisions, and other organizational elements unless the debarment decision is limited by its terms to one or more specifically identified individuals or organizational elements or to specific types of transactions.

(2) The debarment action may include any other affiliate of the participant that is (i) specifically named and (ii) given notice of the proposed debarment and an opportunity to respond (see § \_\_\_\_ .310).

(b) Imputing conduct. For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) Conduct imputed to participant. The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval, or acquiescence.

(2) Conduct imputed to individuals associated with participant. The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) Conduct of one participant imputed to other participants in a joint venture. The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval or acquiescence.

## SUBPART D -- SUSPENSION

## § \_\_\_\_ .400 General.

(a) The suspending official may suspend a participant for any of the causes in § \_\_\_\_ .405 using procedures established in accordance with § \_\_\_\_ .410.

(b) Suspension is a serious action to be imposed on the basis of adequate evidence of one or more of the causes set out in § \_\_\_\_ .405 when it has been determined that immediate action is necessary to protect the public interest.

## § \_\_\_\_ .405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§ \_\_\_\_ .400 and \_\_\_\_ .410 upon adequate evidence:

(1) To suspect the commission of an offense listed in § \_\_\_\_ .305(a); or

(2) That a cause for debarment under § \_\_\_\_ .305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

## § \_\_\_\_ .410 Procedures.

(a) Investigation and referral. Agencies shall establish procedures for the prompt reporting, investigation, and referral to the suspending official of matters appropriate for that official's consideration.

(b) Decisionmaking process. Agencies shall establish procedures governing the suspension decisionmaking process that are as informal as is practicable, consistent with principles of fundamental fairness. These procedures shall, at a minimum, provide the following:

(1) Notice of suspension. When a respondent is suspended, notice shall immediately be given:

(i) That suspension has been imposed;

(ii) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;



(iii) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(iv) Of the cause(s) relied upon under § \_\_\_\_\_.405 for imposing suspension;

(v) That the suspension is for a temporary period pending the completion of an investigation and such legal or debarment proceedings as may ensue;

(vi) Of the provisions of § \_\_\_\_\_.410(b)(1)-(b)(5) and the agency's specific procedures governing suspension decisionmaking; and

(vii) Of the effect of the suspension.

(2) Submission in opposition. Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(3) Additional proceedings as to disputed material facts.

(i) If it is found that there exists a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents, unless (A) the action is based on an indictment, conviction or judgment, or (B) a determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(ii) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

(4) Suspending official's decision. The suspending official may modify or terminate the suspension (for example, see § \_\_\_\_\_.325(c) for the reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency

or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(i) No additional proceedings necessary.

In actions (A) based on an indictment, conviction, or judgment, (B) in which there is no genuine dispute over material facts, or (C) in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(ii) Additional proceedings necessary.

(A) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(B) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(C) The suspending official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(5) Notice of suspending official's decision.

Prompt written notice of the suspending official's decision shall be sent to the respondent and any affiliates involved.

§ \_\_\_\_ .415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of investigation and any ensuing legal or debarment proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or debarment proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General requests its extension, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§ \_\_\_\_ .420 Scope of suspension.

The scope of a suspension shall be the same as the scope of a debarment (see § \_\_\_\_ .330), except that the procedures of § \_\_\_\_ .410 shall be used in imposing a suspension.

## SUBPART E -- AGENCY RESPONSIBILITIES; CONSOLIDATED LIST

§ \_\_\_\_ .500 GSA responsibility.

(a) GSA shall compile, maintain, and distribute a list of all participants who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these guidelines, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, voluntarily excluded, and ineligible participants in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

§ \_\_\_\_ .505 Responsibilities of Federal agencies.

(a) Each agency shall designate a liaison who shall be responsible for providing GSA with current information concerning debarments, suspensions, voluntary exclusions and ineligibilities taken by that agency. Until February 18, 1989, the liaison shall also provide GSA and OMB with information concerning all transactions in which the agency has granted exceptions under § \_\_\_\_ .215 permitting participation by debarred, suspended, or excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, each agency shall advise GSA of the information set forth in § \_\_\_\_ .500(b) and of the exceptions granted under § \_\_\_\_ .215 within five working days after taking such actions.

(c) Each agency shall establish procedures to provide for the effective dissemination and use of the list, in order to ensure that listed persons do not participate in any covered transaction in a manner inconsistent with that person's listed status, except as otherwise provided in these guidelines.

(d) Each agency shall direct inquiries concerning listed persons to the agency that took the action.

(e) Each agency shall establish participant certification requirements in their regulations required under Section 3 of Executive Order 12549. The regulations shall identify which participants in covered transactions are required to certify to whether the participant, or any person acting in a capacity listed in § \_\_\_\_\_.200(b) with respect to the participant or the particular covered transaction, is currently or within the preceding three years has been: (1) debarred, suspended or declared ineligible; (2) formally proposed for debarment, with a final determination still pending; (3) voluntarily excluded from participation; or (4) indicted, convicted, or had a civil judgment rendered against them for any of the offenses listed in § \_\_\_\_\_.305(a). Adverse information on the certification need not necessarily result in denial of participation. Agencies shall establish procedures to ensure that information provided by the certification, and any additional information they may require, is considered in the administration of covered transactions.